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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,491	12/31/2003	Henry A. Privette	5713-001	1204
25184	7590	09/03/2004	EXAMINER	
WILLIAM J. MASON MACCORD MASON PLLC POST OFFICE BOX 1489 WRIGHTSVILLE BEACH, NC 28480				WRIGHT, ANDREW D
		ART UNIT		PAPER NUMBER
		3617		

DATE MAILED: 09/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/749,491	PRIVETTE ET AL.
	<b>Examiner</b>	<b>Art Unit</b>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-9 and 13-20 is/are rejected.
- 7) Claim(s) 10-12 is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date: ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/17/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: ____.                                    |

**DETAILED ACTION**

***Claim Objections***

1. Claim 8 objected to. Claim 8 recites "said carriage" after reciting a first carriage and a second carriage. Such a recitation could be construed as referring to either the first or second carriage or both. For examination it will be assumed that it refers to both. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 14-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 14 recites "means for securing said first and second tracks in a spaced, parallel relationship". The recitation is a means-plus-function recitation that invokes 35 USC 112 6<sup>th</sup> Paragraph. The corresponding structure, material, or acts for performing the function must be clearly identified in the specification. If there is no disclosure of structure, material or acts for performing the recited function, the claim fails to satisfy the requirements of 35 U.S.C. 112, second paragraph. *Budde v. Harley-Davidson, Inc.*, 250 F.3d 1369, 1376, 58 USPQ2d 1801, 1806 (Fed. Cir. 2001); *Cardiac Pacemakers, Inc. v. St. Jude Med., Inc.*, 296 F.3d 1106, 1115-18, 63 USPQ2d 1725, 1731-34 (Fed. Cir. 2002). See MPEP 2181. In this case, there is not a clear identification of the

corresponding structure, material, or acts. This renders the claim indefinite because it is impossible to clearly determine the corresponding structure material, or acts and the equivalents thereof. Claims 15-20 depend from claim 14.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-9 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Kerr (US 5,788,256). Kerr shows an apparatus comprising a carriage (1). Webbing (3) is a mount for holding a watercraft (column 2, lines 30-35). Carriage (1) has an outwardly curved surface (not numbered) at its lower corners in the vicinity of mounting positions (8). The curved surface is disposed beneath the mount (figure 14). The longitudinal axis of the supported watercraft will be transverse to the curved surface.

7. Regarding claim 2, two carriages (1) and (13) are positioned in a spaced parallel relation along the long axis of the watercraft (figure 14).

8. Claim 3, the webbing (3) is vertically adjustable via bolts and holes (10) as shown in figures 13 and 14. The webbing, as part of the entire apparatus, is also vertically adjustable by virtue of the leveling feet (6) which the skilled artisan will recognize as vertically adjustable. The webbing, as part of the entire apparatus, is also vertically adjustable by changing between leveling foot (6), caster (15), and wheel (16).

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9. Claim 4, the carriage includes a hole (11) through which a strap may be run and buckled for the purpose of securing the boat to the assembled invention (column 2, lines 38-40). This arrangement constitutes an adjustable locking means to secure the watercraft on the mount (3).

10. Claim 5, legs (2) can be considered part of the carriage and constitute stops that are capable of preventing the carriage (1) from rotating beyond a predetermined angle. The predetermined angle is an inherent function of the geometry of the carriage (1) including the legs.

11. Claim 7, the recitation of canoe or kayak is an intended use recitation since claim 1 is drawn to the subcombination of the apparatus and not the combination of the apparatus and watercraft. Kerr discloses that the apparatus is capable of supporting a canoe or kayak or other boat with a narrow beam (column 1, lines 5-10 and column 2, lines 30-32).

12. Claim 6, leg (2) constitutes a carriage base that is beneath the carriage (figure 14) and includes a track (figures 7 and 8) for receiving the curved surface.

13. Regarding claims 8, 9, and 13, Kerr discloses two carriages (1, 13) and attachment means (4) extending between the two.

14. It is noted that the claims are replete with intended-use recitations such as "for use in evaluating...", "adapted to support a watercraft...", "to secure a watercraft...", "to prevent rotation of said carriage...", "for receiving said curved lower surface...". A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably

distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

15. Claims 14-20 will be addressed as best understood in light of the 35 USC 112 2<sup>nd</sup> issues described above. Claims 14 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Allen (US 5,951,231). Allen shows an apparatus for supporting a watercraft. The apparatus comprises a first carriage (92) and a second carriage (92). Each carriage has an outer surface (123), the upper portion of which constitutes a watercraft mount. The lower portion of the outer surface (123) is a curved lower surface beneath the mount. The mount surface supports a watercraft with the watercraft longitudinal axis transverse to the long dimension (width) of the curved surface. Lock (102) is a stop that prevent rotation of the roller (92) and therefore prevents rotation of the carriage on the curved surface beyond a predetermined angle. Strap (30) is adjustable locking means that secures the watercraft to the mount. Arms (62, 64) are carriage attachment means. Crossbars (24) are first and second tracks of a base. Car (14) is base attachment means for securing the first and second tracks in spaced parallel relationship the curved surfaces.

16. Regarding claim 20, the watercraft can be a canoe or kayak.

***Allowable Subject Matter***

17. Claims 10-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

18. Claims 15-19 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Elliot et al. ('152) shows a boat support rack. Dean et al. ('507) shows a boat support rack. Ketterhagen ('396) shows a boat support rack.

20. Any inquiry concerning this communication should be directed to examiner Andrew D. Wright at telephone number (703) 308-6841. The examiner can normally be reached Monday-Friday from 9:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joe Morano, can be reached at (703) 308-0230. The fax number for official communications is 703-872-9306. The fax number directly to the examiner for unofficial communications is 703-746-3548.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Andrew D. Wright  
Patent Examiner  
Art Unit 3617

*An 9.1.04*  
ANDREW D. WRIGHT  
PRIMARY EXAMINER